

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,)
)
)
Plaintiff,)
)
)
v.)
)
HEALTHY SOLUTIONS, LLC, ET. AL.,)
)
)
Defendants.)

CAPPSEALS, INC.,)
)
)
Plaintiff-in-)
Intervention)
)
)
v.)
)
HEALTHY SOLUTIONS, LLC., D/B/A)
DIRECT BUSINESS CONCEPTS; ITV)
DIRECT, INC. AND DIRECT)
FULFILLMENT, LLC.)
)
)
Intervenor-)
Defendants.)

C. A. No. 04-CV10421-JLT
(DEIN, J)

**CAPPSEALS, INC.'S REPLY TO THE ITV PARTIES'
OPPOSITION TO CAPPSEALS' MOTION FOR SANCTIONS
UNDER 28 U.S.C. § 1927 AND THE INHERENT POWERS OF THE COURT**

EXHIBIT 5, PART 3

SEYFARTH
ATTORNEYS **SHAW** LLP

55 EAST MONROE STREET - SUITE 4200
CHICAGO, ILLINOIS 60603-5803
AREA CODE (312) 346-8000
FEDERAL ID 36-2152202

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BRUSSELS

November 2004

Invoice No. 1062179
1843 35965 / 35965-000006

Direct Marketing Concepts, Inc.
100 Cummings Center
Suite 506E
Beverly, MA 01915-6109
Attn:

INVOICE SUMMARY

Total Fees	\$ 143.00
Total Disbursements	<u>81.43</u>
Total Fees and Disbursements This Statement	<u>\$ 224.43</u>

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ACCOUNT NUMBER: 4036166
ABA NUMBER: 071000013

ITV 000741


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December 2004

 Invoice No. 1073784
 1843 35965 / 35965-000006
 C3

 Direct Marketing Concepts, Inc.
 P.O. Box 7082
 Beverly, MA 01915
 Attention: Accounts Payable

For legal services rendered through November 24, 2004

Supreme Greens Litigation

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
11/03/04	O. Golinder	2.10	Review transcript of D. Barrett for confidential information.
11/03/04	S. Gelwick	0.50	Review order from the court regarding status hearing; review correspondence binder and pleadings binder for status of case.
11/05/04	S. Gelwick	0.40	Review court's order relating to status conference; conference with C. Robertson regarding ; review court's scheduling order previously issued in case; telephone conference with Judge Tauro's clerk regarding conference.
11/09/04	S. Gelwick	0.80	Review of file in preparation for status conference with Judge Tauro; review correspondence from Cappseal's counsel regarding scheduling of conference.
11/10/04	S. Gelwick	0.30	Review email from Cappseals' counsel; telephone conference with Judge Tauro's clerk regarding status conference; review court's electronic order on status conference.
Total Hours		4.10	
Total Fees			833.00

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Direct Marketing Concepts, Inc.

Invoice No. 1073784
1843 / 35965
Page 2

Disbursements

Copying	.40
Online Research - PACER SERVICE CENTER	5.53

Total Disbursements	<u>\$ 5.93</u>
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Total This Statement	<u>\$ 838.93</u>
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December 2004

Invoice No. 1073784
1843 35965 / 35965-000006

Direct Marketing Concepts, Inc.
P.O. Box 7082
Beverly, MA 01915
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INVOICE SUMMARY

Total Fees	\$ 833.00
Total Disbursements	<u>5.93</u>
Total Fees and Disbursements This Statement	<u>\$ 838.93</u>

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January 2005

Invoice No. 1082472
1843 35965 / 35965-000006
C3

Direct Marketing Concepts, Inc.
P.O. Box 7082
Beverly, MA 01915
Attention: Accounts Payable

For legal services rendered through the month of December 2004

Supreme Greens Litigation

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
12/07/04	S. Gelwick	0.30	Telephone conference with Cappseals' counsel regarding status conference; review of electronic orders of the court.
12/09/04	S. Gelwick	0.10	Review correspondence from Cappseals' counsel to Judge Tauro's clerk.
12/10/04	S. Gelwick	0.20	Review facsimiles from Cappseals' counsel regarding motion to withdraw.
12/13/04	S. Gelwick	0.40	Review facsimile from Gadsby and Hannah regarding documents, review prior response to Gadsby to request for documents; review electronic order from the court.
12/15/04	S. Gelwick	0.30	Review correspondence from opposing counsel relating to status conference before Judge Tauro; review court's scheduling order; conference with C. Robertson regarding
12/17/04	C. Robertson	0.20	Call with counsel regarding document issues and production of third-party documents.

Total Hours 1.50

Total Fees 431.00

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Total This Statement

\$ 431.00

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January 2005

Invoice No. 1082472
1843 35965 / 35965-000006

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INVOICE SUMMARY

Total Fees

\$ 431.00

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February 2005

Invoice No. 1088688
1843 35965 / 35965-000006
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Direct Marketing Concepts, Inc.
P.O. Box 7082
Beverly, MA 01915
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For legal services rendered through the month of January 2005

Supreme Greens Litigation

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
01/03/05	S. Gelwick	0.50	Review correspondence from K. Cataldo; telephone conference with Cappseals' counsel regarding document production; conference with C. Robertson regarding
01/10/05	C. Robertson	0.30	Conference with S. Gelwick regarding review correspondence from Cappseals regarding request for additional financial information.
01/12/05	C. Robertson	0.60	Review and annotate Cappseals motion for additional discovery regarding damages; conference with S. Gelwick regarding
01/12/05	S. Gelwick	0.80	Review electronic notice from the court; review motion to compel, memorandum of law and exhibits filed by Cappseals; conference with P. Brooks and C. Robertson regarding review prior correspondence with Cappseals' counsel.
01/13/05	S. Gelwick	0.60	Further review of motion to compel filed by Cappseals and conduct legal research of MA federal and state case law regarding
01/20/05	P. Brooks	0.20	Telephone conference with Chris regarding and review email regarding Review court order regarding conference

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Invoice No. 1088688
1843 / 35965
Page 2

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
01/21/05	S. Gelwick	3.40	Research First Circuit case law regarding review answer to Cappseals' complaint, PI order in FTC case, and other pleadings in order to draft opposition to Cappseals' motion to compel.
01/24/05	S. Gelwick	2.60	Review of memorandum of law and exhibits in support of Cappseals' motion to compel; review client's initial disclosures, confidential report prepared in FTC litigation, and document production in order to oppose motion to compel; being research of MA case law
01/25/05	C. Robertson	0.80	Review motion and brief in support of motion to compel documents filed by Cappseals; research and review cases regarding ; forward cases to S. Gelwick; outline draft of opposition.
01/25/05	O. Golinder	1.50	Review documents produced for Cappseal's invoices; prepare a chart listing all of the packing slips and total amounts.
01/25/05	S. Gelwick	6.50	Research federal case law regarding ; preparation of opposition to Cappseals' motion to compel production and damages disclosure from DMC; conference with P. Brooks regarding
01/26/05	C. Robertson	1.80	Review, edit, finalize and file brief in opposition to motion to compel discovery; conference with S. Gelwick and O. Golinder regarding review court discovery order and FRCP regarding asset discovery.
01/26/05	O. Golinder	2.00	Review and revise opposition; electronically file same.
01/26/05	P. Brooks	0.60	Opposition to motion to compel
01/26/05	S. Gelwick	6.80	Further legal research of federal case law; further drafting and revisions to opposition to Cappseals' motion to compel and for damages disclosure, preparation opposition for filing; conference with C. Robertson regarding
01/27/05	S. Gelwick	0.20	Review electronic notice from the court; review notice regarding status conference and correspondence from Cappseals' counsel regarding same.
01/28/05	S. Gelwick	0.30	Review correspondence exchanged with B. Christensen regarding settlement with Healthy Solutions.
01/31/05	C. Robertson	0.60	Review briefing on motion to compel in preparation for hearing; review Cappseals motion for summary judgment and opposition in preparation for hearing.
Total Hours		30.10	

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Direct Marketing Concepts, Inc.

Invoice No. 1088688
1843 / 35965
Page 3

Total Fees

8,848.00

Total This Statement

\$8,848.00

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February 2005

Invoice No. 1088688
1843 35965 / 35965-000006

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P.O. Box 7082
Beverly, MA 01915
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INVOICE SUMMARY

Total Fees \$8,848.00

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ACCOUNT NUMBER: 4036166
ABA NUMBER: 071000013

ITV 000751



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March 2005

Invoice No. 1099900
1843 35965 / 35965-000006
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Direct Marketing Concepts, Inc.
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Attention: Accounts Payable

For legal services rendered through the month of February 2005

Supreme Greens Litigation

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
02/01/05	C. Robertson	2.70	Prepare for and attend hearing before Judge Tauro on Cappseals motion to compel discovery; review review cases regarding calls with P. Brooks and M. Sciucco regarding call with W. Callahan regarding
02/01/05	O. Golinder	1.00	Review pleadings; obtain copies of documents for hearing on motion to compel; attention to file.
02/01/05	P. Brooks	0.50	Conference with Robertson regarding
02/01/05	S. Gelwick	1.60	Conference with C. Robertson regarding review financial report prepared for FTC for confidential and irrelevant material; review financial documents previously produced to Cappseals; review correspondence from Cappseals' counsel.
02/02/05	S. Gelwick	0.30	Review Court's discovery order; review email from C. Robertson regarding
02/03/05	C. Robertson	0.60	Review court order regarding discovery request by Cappseals; review motion papers filed by Cappseals with J. O'Toole; conference with P. Brooks regarding

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Invoice No. 1099900

1843 / 35965

Page 2

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
02/03/05	S. Gelwick	0.30	Review email from M. Sciucco and attached agreements; conference with C. Robertson.
02/04/05	C. Robertson	0.30	Call with W. Callahan and J. Solomon regarding
02/04/05	O. Golinder	1.20	Attention to case management.
02/08/05	C. Robertson	0.40	Review and annotate proposed stipulation of dismissal forwarded by B. Christensen; review Tauro injunction regarding release of claims.
02/08/05	S. Gelwick	0.20	Review Healthy Solutions' proposed draft of Stipulation of Dismissal and email of C. Robertson regarding
02/10/05	S. Gelwick	0.40	Review transcript of status conference before Judge Tauro regarding discovery issues; review revised stipulation of dismissal with Healthy Solutions and email from C. Robertson regarding
02/16/05	S. Gelwick	0.30	Review financial report prepared for FTC to
02/18/05	C. Robertson	0.60	Review and annotate letter from Cappseals attorneys regarding discovery requests; call with Cappseals attorneys regarding discovery request and response; call with S. Gelwick regarding
02/18/05	S. Gelwick	1.30	Review of correspondence from Cappseals' counsel regarding damages disclosure; review Cappseals' notice of deposition and document request; conference with C. Robertson; review client's claims against Healthy Solutions to determine client's damages and supplement damages disclosure.
02/22/05	C. Robertson	0.60	Review email from B. Christensen regarding proposed stipulation and settlement; conference with P. Brooks regarding
02/22/05	S. Gelwick	1.70	Review correspondence from Cappseals' counsel; review topics for deposition of client and documents requested at deposition; review document production previously sent to Cappseals and clients' damages disclosure; review stipulation for judgment and revised stipulations drafted by Healthy Solutions' counsel.
02/23/05	C. Robertson	1.30	Review Cappseals letter regarding production of documents and supplementation of Rule 26 disclosures; draft response to Cappseals letter.
02/23/05	S. Gelwick	0.20	Review correspondence from Cappseals regarding clients' damages and email from C. Robertson regarding
02/24/05	C. Robertson	0.40	Revise letter to counsel regarding discovery issues; review settlement documents forwarded by Guerrero counsel; conference with P. Brooks regarding

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Direct Marketing Concepts, Inc.

Invoice No. 1099900
1843 / 35965
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<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
02/24/05	S. Gelwick	0.20	Review C. Robertson's correspondence to Cappseals regarding damages disclosure and calculations.
02/25/05	C. Robertson	0.60	Review workpapers provided by PKF regarding Supreme Greens sales, costs and related issues; call with M. Sciucco regarding
02/28/05	C. Robertson	0.60	Call with Cappseals counsel regarding production of additional documents concerning damages and related issues; review docket regarding O'Toole motion and order; conference with P. Brooks regarding ; call with M. Sciucco.
02/28/05	S. Gelwick	1.30	Review emails from C. Robertson attaching correspondence from Cappseals; conference with C. Robertson regarding review of documents previously produced to all parties.

Total Hours 18.60

Total Fees 5,879.50

Disbursements

Online Research 65.39

Total Disbursements \$ 65.39

Total This Statement \$5,944.89

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ATTORNEYS **SHAW** LLP

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March 2005

Invoice No. 1099900
1843 35965 / 35965-000006

Direct Marketing Concepts, Inc.
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Beverly, MA 01915
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INVOICE SUMMARY

Total Fees	\$5,879.50
Total Disbursements	<u>65.39</u>
Total Fees and Disbursements This Statement	<u>\$5,944.89</u>

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April 2005

Invoice No. 1113182
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Direct Marketing Concepts, Inc.
P.O. Box 7082
Beverly, MA 01915
Attention: Accounts Payable

For legal services rendered through the month of March 2005

Supreme Greens Litigation

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
03/02/05	C. Robertson	0.30	Review email and revised stipulation documents forwarded by B. Christensen; review
03/02/05	S. Gelwick	0.40	Review of draft of final agreement and final stipulation for judgment, and stipulation sent by B. Christenson and emails from C. Robertson regarding
03/03/05	C. Robertson	0.80	Conference with O. Golinder regarding production of documents to Cappseals; review emails regarding Cappseals motion for sanctions; calls with S. Gelwick regarding
03/03/05	S. Gelwick	2.50	Review Cappseals' motion for sanctions and supporting documents; review correspondence from Cappseals; conference with C. Robertson regarding , review client's files and documents produced to FTC to supplement production; review of stipulation for judgment with Healthy Solutions and email from C. Robertson regarding
03/04/05	O. Golinder	1.50	Prepare documents for production; send same.

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Direct Marketing Concepts, Inc.

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
03/04/05	S. Gelwick	1.50	Review exhibits to Cappseals' motion for sanctions, correspondence from counsel, proposed order and electronic notice from court; conference with O. Golinder regarding ; review production and videotapes of versions of infomercial.
03/07/05	C. Robertson	0.80	Review documents provided by PKF regarding preparation of report to FTC; review motion for sanctions filed by Cappseals; conference with S. Gelwick regarding
03/07/05	O. Golinder	0.50	Obtain and distribute copies of the motion for sanctions; attention to file.
03/07/05	S. Gelwick	0.80	Review documents produced by Healthy Solutions to determine whether documents relating to our damages for HS' internet sales were produced.
03/08/05	C. Robertson	0.30	Meet with S. Gelwick regarding
03/08/05	O. Golinder	0.70	Review tapes; prepare for production; draft letter to S. Silverman producing same.
03/08/05	P. Brooks	0.40	Review motion and supporting papers regarding Cappseals
03/09/05	S. Gelwick	1.40	Review of videotapes and audiotapes to produce to Cappseals; conference with C. Robertson regarding review all documents produced that
03/10/05	C. Robertson	0.40	Meet with P. Brooks regarding ; call with M. Sciucco regarding ; review documents forwarded by Healthy Solutions regarding settlement.
03/10/05	P. Brooks	0.40	Review stipulations and oc with C. Robertson
03/10/05	S. Gelwick	1.40	Review prior motion to compel filed by Cappseals, opposition, and court's order on motion to compel in order to prepare opposition to motion for sanctions; begin drafting opposition.
03/14/05	C. Robertson	1.30	Draft affidavit in opposition to motion by Cappseals for sanctions; review court order and correspondence in connection with affidavit; call with S. Gelwick regarding
03/15/05	S. Gelwick	2.50	Review draft affidavit of C. Robertson; review affidavit of S. Silverman and Cappseals' memorandum of law in support of motion for sanctions in order to draft opposition; review case law regarding ; review ITV's document production for documents regarding Guerrero's fraudulent claims.
03/16/05	C. Robertson	0.20	Call with B. Christensen regarding settlement proposal and status.

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Direct Marketing Concepts, Inc.

Invoice No. 1113182
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<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
03/16/05	S. Gelwick	3.30	Review Judge O'Toole's preliminary injunction order as to discovery and access to documents; research First Circuit case law regarding ; begin drafting opposition to Cappsseals' motion for sanctions.
03/17/05	C. Robertson	1.20	Review, edit and finalize opposition brief and affidavit in connection with Cappsseals motion for sanctions; conference with S. Gelwick regarding ; call with M. Sciucco regarding ; review settlement issues.
03/17/05	S. Gelwick	6.80	Preparation of opposition to Cappsseals' motion for sanctions, revise affidavit of C. Robertson, preparation of exhibits to opposition for filing; conference with C. Robertson regarding
03/18/05	C. Robertson	0.30	Calls with M. Sciucco regarding ; call with P. Brooks regarding review with W. Callahan regarding
03/18/05	S. Gelwick	1.20	Review electronic notices from the court; review local rule regarding preparation of pretrial memorandum for final pretrial conference with the Court; review deposition exhibits to identify documents to be used as trial exhibits in pretrial memo.
03/21/05	C. Robertson	1.20	Review and annotate motion to file reply and reply brief in support of motion for sanctions; review affidavit in support of motion; call with D. Kelly regarding pretrial memorandum; conference with P. Brooks regarding ; review filings regarding parties named in complaint; call with M. Sciucco regarding
03/21/05	P. Brooks	0.20	Conference with C. Robertson regarding
03/21/05	S. Gelwick	0.70	Conference with C. Robertson regarding ; review rules regarding content of pretrial memorandum; conference with P. Brooks regarding preparation of list of potential witnesses.
03/22/05	C. Robertson	0.20	Draft and send email to D. Kelly regarding pretrial memorandum; review USDC Mass. rules regarding pretrial memorandum.
03/22/05	S. Gelwick	0.40	Review correspondence with Cappsseals' counsel regarding pretrial memorandum; conference with C. Robertson regarding
03/23/05	S. Gelwick	0.60	Conference with C. Robertson regarding review list of deposition exhibits to be used as trial exhibits.
03/24/05	S. Gelwick	0.70	Review of documents produced by Healthy Solutions to prepare list of proposed trial exhibits.
03/25/05	S. Gelwick	0.80	Begin preparation of joint pretrial memorandum.

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ATTORNEYS **SHAW** LLP

Direct Marketing Concepts, Inc.

Invoice No. 1113182
1843 / 35965
Page 4

<u>Date</u>	<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Description</u>
03/26/05	S. Gelwick	0.90	Further preparation of joint pretrial memorandum.
03/28/05	S. Gelwick	2.30	Review HS' and Cappseals' production of documents, and clients' documents produced to the FTC to designate trial exhibits to be listed on pretrial memorandum.
03/29/05	C. Robertson	3.60	Review and revise pretrial memorandum for submission to court; conference with S. Gelwick regarding review documents for inclusion in pretrial memorandum; review and edit stipulation of dismissal between Healthy Solutions and ITV; review review Rule 41 dismissal issues; call with M. Sciucco regarding calls with B. Christensen regarding settlement and dismissal of claims; review stipulation for filing in FTC action; call with court regarding pretrial memorandum and dismissal.
03/29/05	P. Brooks	0.50	Office conferences regarding
03/29/05	S. Gelwick	8.60	Further review of exhibits to all depositions to designate trial exhibits; preparation of joint pretrial memorandum; review opposition to Cappseals' summary judgment 1 conference with C. Robertson and P. Brooks regarding
03/30/05	C. Robertson	3.20	Draft and revise settlement documents with Healthy Solutions; draft and revise stipulations; review and revise pretrial memorandum; review Healthy Solutions changes to pretrial memorandum; review letter from Cappseals regarding settlement and alleged oral agreement; review cases cited in Cappseals letter.
03/30/05	S. Gelwick	1.80	Review emails and faxes exchanged with counsel for Cappseals and HS; review HS' revisions to pretrial memorandum; review joint motion to dismiss and stipulation for judgment by ITV and HS; review transcript from conference before the court; conference with C. Robertson regarding ; revise joint pretrial memo.
03/31/05	C. Robertson	2.40	Research cases regarding ; meet with P. Brooks and S. Gelwick regarding ; draft response letter to Silverman ; call with court regarding pretrial memorandum and settlement issues.
03/31/05	P. Brooks	0.60	Review letter and transcript regarding Cappseals settlement; conference with Robertson regarding response
03/31/05	S. Gelwick	3.70	Conference with P. Brooks and C. Robertson ; review HS' unilateral pretrial memorandum and Cappseals' additions to joint pretrial memorandum; review C. Robertson's response to Cappseals' opposition to settlement; preparation of unilateral pretrial memorandum for filing.

SEYFARTH
ATTORNEYS **SHAW** LLP

Direct Marketing Concepts, Inc.

Invoice No. 1113182
1843 / 35965
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Total Hours 63.30

Total Fees 19,990.50

Disbursements

Copying	196.40
Facsimile	1.00
Deposition Transcripts - LEAVITT REPORTING SERVICE, INC	816.55
Depo of Michael Howell	
Other - WARROOM DOCUMENT SOLUTIONS	178.50

Total Disbursements \$1,192.45

Total This Statement \$21,182.95